IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WA.No. 1112 of 2007()

{IN WPC.10406/2007 OF THIS COURT}
.....

APPELLANT: PETITIONER:

JOSE THOMAS M., GOVERNMENT CONTRACTOR,
JOSE BUNGALOW, PIDAVOOR P.O.,
PATHANAPURAM, KOLLAM DISTRICT.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS/RESPONDENTS:
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1. UNION OF INDIA, REP.BY THE
GENERAL MANAGER, SOUTHERN RAILWAY,
HEAD QUARTERS, CHENNAI-600 003.

2. THE CHIEF ENGINEER,
SOUTHERN RAILWAY, (CONSTRUCTION),
THYCAUD P.O., TRIVANDRUM.

3. THE DEPUTY CHIEF ENGINEER (CONSTRUCTION)
SOUTHERN RAILWAY, KOLLAM.

4. THE ASSISTANT EXECUTIVE ENGINEER
(CONSTRUCTION), SOUTHERN RAILWAY, KOLLAM.

R2 TO R4 BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No.1112 of 2007

Dated this, the 25th day of May, 2007.

JUDGMENT

H.L. DATTU, C.J.

This appeal is filed against the order passed by the learned single Judge in W.P.(C) No.10406 of 2007.

2. The petitioner is a contractor. He was before this court, inter alia, seeking the following reliefs:

> "(i) Issue a writ of mandamus, or any other appropriate writ, or order, or direction to the respondents requiring to consider and pass orders on Ext.P6, P7 and P9, to take final level measurement of all items and quantities carried out by the petitioner in the presence, before allowing to carry out the balance works at site.
>
> (ii) Issue a writ of prohibition, or any other appropriate writ, or order, or direction to the respondents, interdicting them from in any way allowing to carry out the balance works at site specified in Ext.P1, till final measurement of all items and quantities is taken in the presence of the petitioner and copy of recorded measurement is handed over to him, to raise objection, if any as is required.
>
> (iii) Appoint an Advocate Commissioner to oversee final measurement of all items and quantities of work carried out by the petitioner at site pursuant to Ext.P1 before allowing to carry out the balance works at site, to prevent alteration of the quantity, appearance, and nature of the work carried out by him, in any manner; and
>
> (iv) Grant such other reliefs this Hon. Court may deem proper, just, equitable and necessary in the peculiar facts and circumstances of the case including the costs incurred by the petitioner in these proceedings."

3. This court, while entertaining the writ petition, had granted an interim order dated 27.3.2007. The interim order reads as under:

> "If the petitioner appears before the 4th respondent, tomorrow at 10 A.M., measurement shall be taken at his presence. This order is being issued on the basis of the submissions made by the learned counsel for the respondents."

4. Alleging that the respondents have wilfully and deliberately disobeyed the orders and directions issued by this court, the petitioner had filed Contempt Petition No.577 of 2007. This court by its order dated 30.3.2007 has rejected the writ petition and the contempt petition, and while doing so the learned Judge has observed as under:

> "If there is any controversy as to whether measurements following the order dated 27.3.2007 have not been appropriately taken, the Railways have to sustain their decision and action on the basis of measurements taken by them earlier, which, according to them, have been recorded in the presence of independent witnesses. At any rate, I am of the firm view that any dispute between the parties cannot further deter the work in question, firstly because the work has been re-arranged and, secondly, because any further delay in carrying on with the work will adversely affect the exchequer by any intervening monsoon. That apart, the questions raised are essentially disputed questions of

> facts, which cannot be left to be decided in the writ petition. I also do not find that the respondent in the contempt case, is at least prima facie, guilty of disobedience."

5. Aggrieved by the aforesaid order of the learned single Judge, the appellant is before us in this appeal.

6. As we understand, the primary relief sought for by the petitioner in the writ petition was for a direction to the 4th respondent to take appropriate measurement of the work done by the petitioner pursuant to a contract awarded to him. In fact, by an interim order, this court had granted the main relief itself to the petitioner.

7. Since, according to the petitioner, the respondents had not complied with the interim order dated 27.3.2007, he filed a contempt petition before this court as C.O.C.No.577 of 2007. This court, after detailed consideration of the allegations made, has rejected the same and thereby rejected the writ petition also.

8. As we have already stated, the main relief sought for by the appellant/petitioner against the respondents was to direct them to make appropriate measurement of the work carried out by the petitioner pursuant to contract awarded to him. This court, while entertaining the writ petition, had directed the 4th respondent to take appropriate measurement of the work done by the petitioner. Since the main prayer sought for by the petitioner is granted, while granting the

interim prayer by this court it cannot be said that the writ petitioner is aggrieved by the orders passed by this court on 27.3.2007 and 30.3.2007. In view of the above, writ appeal deserves to be rejected and accordingly it is rejected. Ordered accordingly.

Sd/-
H.L. DATTU,
CHIEF JUSTICE.

Sd/-
K.T. SANKARAN,
JUDGE.

sk/DK.

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P.S. To Judge